HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1543 of 2001 (S/S)

Kheyali Dutt Joshi
Vs.
Union of India and others.

Appr0ved for reporting.

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Not approved for reporting

Date of decision 13.7.2005.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1543 (S/S) OF 2001
(Old No. 10810 of 2000)

No. 4164272 Ex Sepoy Kheyali Dutt Joshi,
S/o late Urba Dutt Joshi,
Village & Post Devalbichral
District-Bageshwar. .....Petitioner

Versus

1. The Union of India,
through the Secretary
Ministry of Defence,
New Delhi.
2. Chief of the Army Staff,
through
GOC
U.P. Area
Bareilly.
3. C.C.D.A. (P)
through
commandant-cum-CRO
KRC Ranikhet. ..... Respondents

Dated: July 13, 2005

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ of mandamus directing the respondents to grant disability pension to the petitioner from the date of his discharge from the Indian Army.

Briefly stated, the petitioner was enrolled in the Indian Army on 10th December, 1971 after obtaining the requisite training at Kumaon Regiment Centre, Ranikhet. The petitioner was posted in the infantry battalion and had the privilege of serving in various sectors of the nation including Mizoram, Nefa, Nagaland and Cactus Lily.

While serving in Punjab, he had suffered ailment and was hospitalised followed by his being placed in Low Medical Category (LMC) – CEE (Ty) and the LMC was later on upgraded to LMC – CEE (Pt). The petitioner was sent to the Kumaon Regimental Centre as the same was his Centre and records, where from the petitioner was discharged on 7th June, 1979 and he was assured that he shall be entitled to disability pension plus service benefits etc.

After correspondence, with the Chief Controller of Defence Accounts (P) Allahabad, the claim of the petitioner was rejected in the year, 1982. The contention of the respondents was that there were certain diseases like 'neurosis' which were inbuilt in the body of the human being and which may surface up at any time, due to severe stress and strains.

Against the order of the Chief Controller of Defence Accounts (P), Allahabad, the petitioner preferred an appeal which was also rejected by the Government in the year, 1987 followed by communication during the year, 1997.

The petitioner has submitted that he joined the Indian Army in the year, 1971 and suffered the disease called 'neurosis' in the year, 1977 and this disease is attributed to the military services and thus the petitioner is entitled to disability pension.

Respondents have filed counter affidavit and denied the allegations made in the petition. The respondents have admitted that No. 4164272 EX Sepo Kheyali Dutt Joshi was enrolled in the Indian Army on 10th December, 1971 and discharged from Army service on 07th June, 1979 (AN) for Low Medical Category CEE (Permt (due to FITS (old) 434 under Army Rule 13(3) Item III(V) read in conjunction with Army Rule 13(2A). The disability pension claim in respect of the petitioner was submitted to C.C.D.A.(P), Allahabad but the

same was rejected by pension sanctioning authority. Allahabad on the grounds that the petitioner was suffering disability, which was not attributed to military service and does not fulfill the condition i.e. that it existed before or arose during military service and has been or remains aggravated thereby. The petitioner has preferred an appeal which, was forwarded to C.C.D.A.(P), Allahabad for annual submission to the Govt. of India, Minister of Defence, however, the said appeal after due consideration was also rejected by the Govt. of India Ministry of Defence vide their latter No. 7/534/90/Defence (Pension Appeal) dated 14th April, 1982 on the ground that the disability on account of which the petitioner was discharged from service was a natural course and hence the C.C.D.A.(P), Allahabad has rejected the claim correctly. Present writ petition has been filed challenging the order passed by the respondents refusing to grant disability pension.

I have heard the learned counsel for the parties and have perused the records.

From the record, it appears that the petitioner has served in the army for 8 years and according to the petitioner he is entitled for the payment of disability pension in accordance with Rule.

Para 173 of Pension Regulation reads as under:

173. Unless otherwise specifically provided as disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.

Rule 3, 4 and 7 of Appendix II are relevant and, therefore, are quoted below:

3. There must be a casual connection between disablement and military service for attributability of aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field of service cases.

7. In respect of disease, the following rules will be observed.:

(a) Cases, in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individuals' acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

(c) If the disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and

that the conditions were due to the circumstances of duty in military service.

(d) In considering whether a particular disease is due to military service, it is necessary to relate the established facts in the aetiology of the disease and of its normal development to the effect that conditions of service e.g. exposure, stress climate, etc may have had on its manifestation. Regard must also be had to the time factor.

The question of disability pension came up for consideration in the case of Shiv Murti Rai v. Union of India, (1997) 2 U.P.L.B.&E.C. 1179, Allahabad High Court in a similar case has held s under:

"In the present case, there is no material to suggest that any indepth study was made at any stage regarding direct and circumstantial evidence which was necessary for deciding issue of entitlement. Further, if the Medical Board could not precisely and with certainty point out the real cause, the benefit of reasonable doubt ought to have gone in favour of petitioner. In respect of disease as provided in Rule 7 (b), a disease which has led to an individual's discharge will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance in military service. In the present case it is not disputed that at the time the petitioner joined the service, he did not suffer from any

ailment and no note of such kind was made in his service record. The medical opinion did not record any reason for saying that it is not connected with military service though the disease could be caused by stress and strain. Petitioner was not engaged on sedentary duties. He was in active military service which required physical and mental strains. In the facts and circumstances of the case in my opinion the deeming clause was fully application in the present case. The deeming provision provided in Rule 7 (b) created a presumption that disability has been caused due o military service and for rebutting this presumption there should have been strong, valid and cogent reasons to rule out that the disease could be attributed to the military service. There is total absence of such reasons."

The observations made in this case has been followed in the case of Inder Jang v. Union of India (1999) 3 UPLBEC 2010.

In the case of Mahavir Singh Rawat vs. Union of India and others 2001 (1) A.W.C. 363 it has been held as under:

"In the case of normal service or individual pension specified 15 years qualifying period of service is required, while disability pension is not dependent on any particular length of service. Disability pension is awarded to an employee who has been invalided on account of disability which has

occasioned due to any hurt, injury or illness. Sanction of disability pension, therefore, is not dependent on any particular length of service. The provisions of Para 132 of Pension Regulations are not attracted in the present case. The case of the petitioner for disability pension is squarely covered by the provisions of Para 173 of the Pension Regulation."

After assessment of the fact it will appear that the aforesaid case law is fully applicable to the facts of the present case in as much as petitioner in paragraph 9 of the writ petition stated that the disease called Neurosis was due to stress and strains of the military service. Paragraph 9 is reproduced as under:

"That it is sad state indeed in that a young citizen joins the Indian Army service it for almost 8 years, and in between during the year 1975 to1977 claimed to have suffered from a disease called "Neurosis", which could be attributed to the stress and strains of the military service, was based on Laws reported/referred in para 5 above by the courts in India entitled to disability pension plus service element YET though thrown out by way of a Invalidating Medical Board/Release Medical Board (RMB) and then told that the disability was not attributable to military service, as such neither he was entitled to any pensionary benefits nor a sheltered appointment, meaning that after donning olive green inform, defending the nation was told to go on the roads an EX Soldier of the valiant Indian Army."

In the present case the petitioner was found 80% disabled and he was invalided for the military service and was boarded out after having put in 8 years service. The aforesaid Rule 173

requires that invalidation from the military service should be on account of disability, which is attributable to or aggravated by the military serve. This rule provides that an employee who has been boarded out may suffer form a particular disease at the time of his recruitment in the Army and if the disease aggravated after entering in the military service resulting in his discharge from service due to the disability, it will entitle him to claim disability pension. In other words, if the claimant suffered disability while in service, it will be presumed that he is entitled to the disability pension.

The facts mentioned above shows that the petitioner has rendered more than 8 of year's service in the Indian Army and has spent a valuable time of his life in service Army. The disease of the petitioner was borne out to the petitioner during his employment in the Army and thus the employer of the petitioner was bound to give treatment to the petitioner during his service and if he was not found fit for military service, it was incumbent for the authorities to grant disability pension to the petitioner.

The Apex Court in the case Madan Singh Shekhawat vs. Union of India, (1999) 6 SCC 459 observed as under:

It is the duty of court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule.

In Seaford Court Estates Ltd. v. Asher (1949) 2 All ER 155 : (1949) 2 KB 481 Lord Denning, L.J. (as he then was) held:

"[When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament,... and then he must supplement the written word so as to give

'force and life' to the intention of the legislature. ... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

In view of the aforesaid facts, the writ petition is allowed. A mandamus is issued directing the respondents to consider the case of the petitioner for payment of disability pension after taking into consideration the observations made above and in accordance with rules. There will be no order as to costs.

Dated: July 13, 2005 **Rajesh Tandon J.**

*Dhyani